

**REMARKS**

Claims 1-38 are all the claims pending in the present application, claims 1, 8, 17, 25, and 32 having been amended to recite aspects of the disclosed embodiments with more particularity, and claim 39 having been canceled without prejudice or disclaimer. Support for the foregoing amendments is found throughout the present application, and in particular, in the written description beginning at page 7, line 27, and continuing to page 8, line 22, with specific reference to FIG. 2; similar support is located in the text at page 13, lines 15-19. No new matter has been added.

Claims 8-12, 15, 16, 25-29, 32-36, and 39 stand rejected under 35 U.S.C. §102(e) as anticipated by United States Patent Application Publication (US 2002/0032777 A1) to Kawata et al. (Kawata). Claims 1-7, 13, 14, 17-24, 30, 31, 37, and 38 stand rejected under 35 U.S.C. §103(a) as unpatentable over Kawata in view of United States Patent Application Publication (US 2003/0037093 A1) to Bhat et al. (Bhat). Applicants respectfully traverse the prior art rejections and request reconsideration and allowance of all the pending claims in light of the following remarks.

Aspects of the present invention relate generally to managing data traffic transmitted across a communications network, and more particularly to a system and method providing distribution of data packets among a plurality of call control modules or data processors. In the exemplary load management systems and methods described and claimed in the present application, the number of messages or data packets distributed to each processor may be maintained substantially uniform, and all the messages or data packets corresponding to a particular network transaction or data communication may be distributed to the same processor. Specifically, as recited in the independent claims, every data packet associated with a network transaction is distributed to the same selected one of a plurality of data communication processors.

**The Rejections Under §102(e)**

Claims 8-12, 15, 16, 25-29, 32-36, and 39 stand rejected under 35 U.S.C. §102(e) as anticipated by Kawata. To anticipate a pending claim under any of the various subsections of 35 U.S.C. §102, a single reference must teach every element recited in the pending claim; as set forth in more detail below, the Kawata publication is more deficient than the Examiner acknowledges. In particular, the published application is insufficient to anticipate the pending claims.

Independent claims 8 and 32 both recite an element directed to distributing network transaction data packets “such that every said data packet associated with said network transaction is distributed to said selected one of said plurality of data processors” (*see, e.g.*, claim 8; other pending independent claims 1, 17, 25, and 32 include similar recitations). While Kawata arguably teaches distributing incoming data to one of a plurality of processors, Kawata neither teaches nor suggests that every data packet associated with a particular transaction is distributed to the same processor.

In rejecting claim 39 in paragraph 20 of the outstanding Office Action, the Examiner relied upon paragraphs 0005-0010 and 0037-0042 of Kawata. The text at these portions of Kawata does not support the Examiner’s position, nor do the fair teachings at any other portion of the publication. While Kawata addresses “service request” packets, the publication is silent with respect to treatment of the data packets associated with each “service,” and certainly does not teach a load distribution methodology as described in the present application and recited with particularity in the claims.

As set forth in detail at paragraphs 0040 and 0041, for example, the Kawata system is operative in accordance with address header information for transmitted “service request” packets, and does not contemplate any particular manner of handling each packet associated with a particular “service.” Even assuming, *arguendo*, that the Examiner were to interpret an individual “service” contemplated in Kawata as equivalent to the more complicated “network transaction” described and claimed in the present application, then Kawata is clearly deficient to the extent that it fails to teach or even to suggest how each data packet associated with that individual “service” is distributed.

In any event, Applicants note that the individual “services” taught in the Kawata publication are not equivalent to the “network transactions” described (*see, e.g.*, the text at page 3, line 20, through page 4, line 10) and claimed in the present application. Specifically, as set forth in the description at paragraph 0041 of Kawata, a different server is selected “each time a service request packet is received.” Accordingly, individual services, *even when associated with the same network transaction*, are handled differently, each as a function of current load conditions at the plurality of servers. The methodology taught in Kawata is clearly different from that described and claimed in the present application.

Based at least upon the foregoing, Applicants submit that the Kawata publication is insufficient to anticipate any of the pending claims, and that the rejection of claims 8-12, 15, 16, 25-29, 32-36, and 39 under 35 U.S.C. §102(e) is improper. In addition to the reasons set forth

above with specific reference to the independent claims, their respective dependencies are also allowable for the specific recitations therein.

### **The Rejections Under §103(a)**

Claims 1-7, 13, 14, 17-24, 30, 31, 37, and 38 stand rejected under 35 U.S.C. §103(a) as unpatentable over Kawata in view of Bhat. Applicants respectfully submit that Bhat fails to supply the clear deficiencies of Kawata. For example, the Examiner has relied upon the Bhat publication for its teachings related to hash functions and modulo functions in the context of load distribution techniques. Given the foregoing shortcomings of Kawata, however, Applicants submit that the alleged teachings of Bhat are unremarkable. This would be true even if the Examiner's analysis of Bhat were correct, and even if the combination of Kawata and Bhat were appropriate, *i.e.*, even the combined teachings still fail to address every element recited in the pending claims.

In particular, the Bhat publication neither teaches nor even suggests, among other things, the data packet distribution strategy described in the pending application and called out in every pending claim. Assuming, *arguendo*, that the combination were proper, the fair teachings of Kawata and Bhat, even when considered in combination, still fail to teach a methodology of distributing network transaction data packets "such that every said data packet associated with said network transaction is distributed to said selected one of said plurality of data processors."

Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness, and the rejections under 35 U.S.C. §103(a) are improper. At least for the reasons set forth above with specific reference to claims 1, 8, 17, 25, and 32, their respective dependencies are also allowable. Further, claims 2-7, 13, 14, 18-24, 30, 31, 37, and 38 recite additional features and combinations of elements, and Applicants submit that these claims are additionally allowable for their respective recitations as well.


**CONCLUSION**

Based at least upon the foregoing Remarks, Applicants respectfully submit that all the pending claims are allowable, and that the present application is currently in condition for allowance. The Examiner is encouraged to contact the undersigned at 858-509-4007 if it is believed that a discussion may advance the prosecution of this case.

Applicants believe that a fee is required at this time. Please apply any charges or credit any overpayments to Deposit Account No. 50-2212.

Respectfully submitted,

PILLSBURY WINTHROP LLP

By   
Victor J. Castellucci  
Registration No. 43,535

Dated: April 28, 2004

Address all correspondence to:  
11682 El Camino Real, Suite 200  
San Diego, California 92130  
Tel: (858) 509-4007  
Fax: (858) 509-4010  
E-mail: vcastellucci@pillsburywinthrop.com